

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

DOLLIE SIMPSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	NO. 3:11-0041
	)	Judge Sharp/Bryant
QUEST DIAGNOSTIC, et al.,	)	
	)	
Defendants.	)	

TO: The Honorable Kevin H. Sharp

**REPORT AND RECOMMENDATION**

Plaintiff Dollie Simpson, proceeding pro se, filed her complaint on January 12, 2011, alleging that defendants wrongfully failed to promote her and harassed her at work due to a physical disability following her return to employment after undergoing surgery (Docket Entry No. 1).

On June 2, 2011, the undersigned Magistrate Judge issued an order requiring plaintiff to show cause on or before June 20, 2011, why her complaint should not be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure because of plaintiff's failure to obtain service of process on any of the defendants (Docket Entry No. 7). Plaintiff responded to this order on June 14, 2011, in a letter stating that she had undergone shoulder surgery on February 23, 2011, and that she had not been able to find a lawyer willing to take her case (Docket Entry No. 10). Since the filing of plaintiff's letter, it appears from the record that nothing else has occurred in this case, including service of process on any defendant.

Rule 4(m) of the Federal Rules of Civil Procedure provides that if a defendant is not served within 120 days after the complaint is filed, the court must dismiss the action without prejudice against that defendant or order that service be made within a specified time. The rule further provides that if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. Although as of the date of this report and recommendation 265 days have expired since the filing of the complaint, plaintiff has apparently failed to serve process on any defendant. Moreover, plaintiff has not sought an extension of time within which to accomplish this service despite an earlier show cause order notifying plaintiff that timely service of process is required.

The undersigned Magistrate Judge finds that plaintiff's apparent explanations - shoulder surgery over seven months ago and the inability to find a lawyer willing to accept this case - do not establish good cause for further delay in serving process on defendants.

#### **RECOMMENDATION**

For the reasons stated above, the undersigned Magistrate Judge **RECOMMENDS** that the complaint be **DISMISSED** without prejudice pursuant to Rule 4(m) for plaintiff's failure to obtain service of process on defendants.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from service of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986).

**ENTERED** this 4th day of October 2011.

s/ John S. Bryant  
JOHN S. BRYANT  
United States Magistrate Judge